87-290

Supreme Court, U.S.
FILED
AUG 4 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

==========

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

Domingo Roman,

Petitioner,

v.

Sunny Slope Farms, Inc.

==========

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

==========

Marvin H. Feingold
Neighborhood Legal Assistance
Program, Inc.
438 King Street
Charleston, SC 29403
(803) 722-0107

Counsel of Record for Petitioner

QUESTION PRESENTED

Whether the Court of Appeals erred in concluding that State Worker Compensation is the exclusive remedy available to a migrant farmworker who is injured on the job, though the injury resulted from an otherwise actionable violation of the Migrant and Seasonal Agricultural Worker Protection Act.

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	ii
Opinions Below	1
Jurisdiction	1
Statutes Involved	1
Statement of the Case	2
Lower Court Jurisdiction	4
Argument	4
Appendix	17
District Court Bench Order of August 22, 1985	17
District Court Order of September 17, 1985	22
Fourth Circuit Opinion of May 7, 1987	25
Federal Statutes	40
State Statutes	49

TABLE OF AUTHORITIES

Page

Cases

Bean v. Piedmont Interstate Fair Association, 124 F. Supp. 385 (D.C., S.C. 1954) 15

Beliz v. W. H. McLeod & Sons Packing Co., 765 F.2d 1317 (1985) 8

Florida Lime & Avocado, Inc. v. Paul, 373 U.S. 132, 10 L. Ed 2d 248, 83 S. Ct. 1210 (1963) 7

Garvin v. Alumax of South Carolina, Inc., 787 F.2d 910 (4th Cir. 1986) 3,10,11

Johansen v. United States, 343 U.S. 427, 96 L. Ed 1051, 72 S. Ct. 849 (1952) 12

Jones v. Rath Packing Co., 430 U.S. 519, 51 L. Ed 604, 97 S. Ct. 1305 (1977) 7

Keeter, Clifton Mfg. Co., 82 S.E. 2d 520 (1954 14

United States v. Demko, 385 U.S. 149, 17 L. Ed 2d 258, 87 S. Ct. 382 (1966) 3,12,13

Page

Statutes and Rules

7 U.S.C. §2041, et seq.
reprinted in 1982 U.S.
Code Cong. & Ad. News 4547,
4547-49 4

7 U.S.C. § 2044(a)(2)
reprinted in 1982 U.S.
Code Cong. & Ad. News 4547
4547-49 9

28 U.S.C. § 1331 4

28 U.S.C. § 1332 4

28 U.S.C. § 1337 4

29 U.S.C. § 1801, et seq. 2, 4

29 U.S.C. § 1841 . . . . . 8, 40

29 U.S.C. § 1854(a) 4, 14, 47

29 U.S.C. § 1856 . . . . . .15, 49

29 U.S.C. § 1871 . . . . . 3, 49

Code of S.C. (1976)
§ 42-1-10, et seq. (1976) 3

Code of S.C. (1976)
§ 42-1-360 (1976) 15, 49

Code of S.C. (1976)
§ 42-1-380 (1976) 15, 50

Code of S.C. (1976)
§ 42-1-540 . . . . . 3, 50

Code of S.C. (1976)
§ 42-9-20 14,50

Page

Legislative History

Hearings before the Subcommittee on Agricultural Labor of the Committee on Education and Labor, House of Representatives 93rd Congress, 1st Session 58 11

S. Rep No. 202, 88th Cong. 1st Sess. 2-4 (1963) 5

S. Rep. No. 93-1295, 93rd Cong. 2d Sess. 3,7 (1974) 4

S. Rep. No. 93-1943, 93rd Cong. 2d Sess. 7 (1974) 6

CONG. REC. H. 04456 (1983) 6

Treatises

Sutherland Statutory Consruction § 47.11 (4th Ed.) 6

OPINIONS BELOW

The decision of the Court of Appeals is reported at 817 F.2d 1117 (4th Cir. 1987) and is set out at pgs. 25-39 of the Appendix to the Petition.

JURISDICTION

The Judgment of the Court of Appeals was entered on May 7, 1987. No rehearing was sought or granted. Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254.

STATUTES INVOLVED

29 U.S.C. §1801 et seq., The Migrant and Seasonal Agricultural Protection Act (AWPA), specifically Sections 1841, 1854 1856 and 1871 are set out in the appendix at pp. 40-49 . Also primarily involved are S.C. Code Ann. §42-1-360, 42-1-380, §42-1-540 and 42-9-20, set out in the appendix at p. 49-52 .

STATEMENT OF THE CASE

On May 10, 1985, Petitioner, commenced this action for money damages in the United States District Court for the District of South Carolina, Spartanburg Division. The action was brought under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C. §1801 et seq., and state common law for battery and fraud.

Petitioner's Complaint alleged that while working as a migrant farmworker in defendant's peach orchards during July and August of 1983, he was repeatedly sprayed with a chemical pesticide dangerous to humans. He also alleged that, knowing the dangers inherent in such sprayings, defendant failed to provide protective clothing as required in their written employment agreement; as a consequence Petitioner was hospitalized for four days

for resulting physical injuries.

On August 22, 1985 after a hearing, the District Court granted Defendant's motion to dismiss all claims and Judgment for the defendant, citing as its sole ground, the exclusive remedy provision of the South Carolina Workers' Compensation Law, S.C. Code Ann. §42-1-540.

The Fourth Circuit Court of Appeals, assuming arguendo an otherwise actionable claim under AWPA; relying on 29 U.S.C. §1871 and 1841 which express Congress' intention to supplement state law and upon United States v. Demko 385 U.S. 149 (1966) and Garvin v. Alumax of South Carolina, Inc., 787 F.2d 910 (4th Cir. 1986), affirmed the District Court Judgment on May 7, 1987 and holds therein that AWPA "was not intended to provide an additional remedy for an on-the-job injury in a case in which state worker's compensation is available." Appendix at p. 30 .

LOWER COURT JURISDICTION

Jurisdiction in the District Court was founded on 29 U.S.C. §1854(a) and 28 U.S.C. §§1331, 1332 and 1337.

ARGUMENT

The Fourth Circuit has decided an important question of federal law which has not been but should be settled by this Court.

The Fourth Circuit is in error in concluding that Congress did not intend to limit the power of the states to interfere, through exclusive remedy provisions, with the purposes, intentions, remedies and procedures created by AWPA, 29 U.S.C. §§1801, et seq.

As outlined below, Congress intended that the private right of action provision of AWPA serve as a primary means of enforcement of the Act. AWPA was enacted in 1983 to replace and correct the deficiencies in the Farm Labor Contractor Registration Act (FLCRA), 7 U.S.C. Sec.

2041 et. seq. See H.R. REP. NO. 97-885, 9th Cong., 2d Sess. 1, 1-4 (1982), reprinted in 1982 U.S. CODE CONG. & AD. NEWS 4547, 4547-49. Since both laws were enacted for the purpose of protecting farmworkers, id., and since AWPA was a Congressional attempt to correct the deficiencies of FLCRA, id., it is appropriate to examine the legislative history of both laws together to discern Congressional intent in providing a private right of action and money penalties in the laws.

When Congress enacted FLCRA in 1963, it recognized that "migrant workers are particularly vulnerable to exploitation and abuse" and that attempts to resolve the problems common to farmworkers required "federal action" and a "uniform approach". See S.REP. NO. 202, 88th Cong. 1st Sess. 2-4 (1963). Thus, in enacting FLCRA, the intent is clear that

the federal government act in the area of farmworker protection.

In 1974, Congress recognized the need to strengthen FLCRA to make it a more potent weapon against abuse. S.rep. NO. 93-1295, 93rd Cong., 2d Sess. 3 (1974) reprinted in 1974 (reprinted in 1974 U.S. CODE CONG. & AD. NEWS 6441). The Act as it existed before the 1974 amendments could not be effectively enforced and therfore provided no real deterrent to violations. Id. Among the perceived causes of the Act's ineffectiveness was the lack of a private right of action. Id. The 1974 amendments, provision of an "unfettered civil remedy" for aggrieved persons was seen as "crucial to the effective enforcement" of existing law. H.R. REP. 93-1943, 93rd Cong., 2d Sess. 7. In 1983, AWPA was enacted to rectify ongoing problems with FLCRA. CONG. REC. H. 10456 (1983). However, the private right of

action provision remained as a primary means of effectuating the goals and policies underlying the Act.

To hold that, after creating private causes of action for violation of employment standards, the Congress would intend that states could substantially weaken the remedial scheme of the Act by enacting a Worker Compensation Law strains reason. State law may not stand as an "obstacle to the accomplishment and execution of the full purposes and objective of Congress", Jones v. Rath Packing Co., 430 U.S. 519, (1977), and Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132 (1963).

At least one District Court has expressed the view that the purpose of AWPA's civil remedy is not restricted to compensation of individual plaintiffs. It is designed also to promote enforcement of the Act and thereby deter and correct

the exploitive practices that have historically plagued the migrant labor market. Beliz v. W. H. McLeod & Sons Packing Co., 765 F.2d 1317 (1985) at 1332. The Beliz case, in discussing the purpose of the damage provision, stated that "it ought not be cheaper to violate the Act and be sued than to comply with the statutory requirements." id. The decision of the Fourth Circuit in this case has such an effect; it goes a long way toward enabling growers to avoid compliance by merely maintaining worker compensation insurance.

The Court of Appeals' reliance on 29 U.S.C. §1841 dealing with Motor Vehicle Safety, as an indication that Congress intended Worker Compensation remedies to supplant all AWPA claims, is similarly misplaced. The Court specifically and correctly recognizes that §1841 first sets safety standards for transportation

of workers and secondly requires a special policy of insurance. The Act further prescribes, as the Court observes, that if Worker Compensation insurance is maintained, then the special motor vehicle policy is not required. The Fourth Circuit interprets these provisions to conclude that rights and remedies of AWPA may be displaced by the exclusive remedy provisions of a state Worker Compensation Act and that, therefore, states may eliminate remedies designed in part to enforce transportation safety standards. If Congress' sole purpose in enacting AWPA was to assure minimum compensation for injuries, such as that provided for by worker compensation, it need not have gone beyond the requirement in 7 U.S.C. 2044(a)(2) that insurance coverage be provided; it need not have created a system of standards and penalties for their enforcement.

The rules of statutory interpretation that: specific language excludes the general and that exceptions should be strictly construed, compel the conclusion that even if worker compensation was intended by Congress to be the exclusive remedy in the case of transportation injuries, (where such insurance coverage is available), the absence of such specific language regarding other areas of worker safety strongly suggests that no such result was intended in such latter case. See Sutherland Stat. Const. §47.11 (4th Ed.)

Garvin v. Alumax, supra involved the conflict between a federal Worker Compensation Act and a state Worker Compensation Act. Plaintiff in that case argued for applicability of the federal act because it would allow an action under state law in negligence against the defendant (a third party) whereas the

state Worker Compensation Act would not. Quite distinctly in Roman, the consequence of the deference to the state exclusive remedy provision is to eliminate federal substantive causes of action not state common law remedies as in Alumax. While Congress may have intended deference to state exclusive remedy provisions when it was writing the LHWCA, itself a Worker Compensation Act, it does not follow that in creating substantive duties affecting safety, it intended its punitive measures to be rendered subsurvient to worker compensation exclusivity.

Limiting a party aggrieved by an AWPA violation to his worker compensation benefits further thwarts congressional intent that "full actual damages" be recoverable and that there be "no limit" on such damage. Subcommittee on Agricultural Labor of the Committee on Education and Labor, House of

Representatives 93rd Cong. 1st Sess. 58 (statement of Rep. Ford.)

U.S. v. Demko, 385 U.S. 149 (1966) presents a significantly different issue than that in Roman. The issue in Demko is whether a federal prisoner may sue for negligence after recovery of a compensation award under a special Federal Prisoner Compensation Act or whether such recovery is precluded by implication. The Supreme Court, relying on Johanson v. United States, 343 U.S. 427, holds that even in the absence of a specific exclusive remedy provision within the federal prisoner compensation statute, where fair compensation is provided by that statute, additional civil recovery under the Federal Tort Claims Act is precluded. Central to the reasoning of the Court in Demko is the inequity which, according to the Court, would result to federal employees seeking to recover under

the Federal Employees Compensation Act, which itself, contains an exclusive remedy provision. The Court further assumes that the Federal Prisoner Compensation Act would have contained such an exclusive remedy provision had the Federal Tort Claims Act existed at the time the prisoner act became law. Demko, at 152.

The chief distinction between Roman and Demko is that Roman involves a statute not purely concerned with compensation but rather with working conditions of farmworkers. Again, the punitive nature of civil damages in AWPA raises consideration of Congressional intent far beyond simply the question of fair compensation. The Court's conclusion that "to hold that the AWPA would have the supplemental effect claimed by the Plaintiff would give the Plaintiff greater protection than other agricultural workers in South Carolina covered by the state's

Worker Compensation Law", misstates the issue. If Plaintiff can recover under AWPA then in fact other farmworkers in South Carolina and elsewhere can recover under AWPA and the state Workers Compensation Law would therefore not apply in an equally appropriate case.

AWPA provides for different and more extensive relief than workers' compensation. It is clear that AWPA and the South Carolina Workers' Compensation Act have different goals, provide different remedies and can exist concurrently without conflict. Workers' Compensation only provides about two-thirds of lost wages resulting from actual disability. Sec. 42-9-20 Code of S.C. (1976); Keeter v. Clifton, Mfg. Co., 82 S.E. 2d 520 (1954). AWPA on the other hand provides for actual damages or $500 per violation. 29 U.S.C. Sec. 1854. Actual damages are by definition not limited to compensation for disability

alone but include the full range of legal relief.

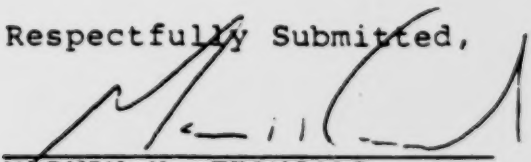
An argument made, but ignored by the Fourth Circuit, is that under AWPA, "agreements by employees purporting to waive or to modify rights under the Act shall be void as contrary to public policy" .... 29 U.S.C. §1856. In South Carolina, Worker's Compensation never applies to agricultural workers at all unless they voluntarily elect to be bound by the act in the manner provided by the Act. S.C. Code Ann. §§ 42-1-360; 42-1-380; Bean v. Piedmont Interstate Fair Association, 124 F. Supp. 385 (D.C., SC, 1954). Any such agreement by Plaintiff to be bound by Worker Compensation would be void under 29 U.S.C. §1856 to the extent that his right to recover under AWPA would be diminished by such consent.

The Fourth Circuit places some reliance for its decision on the fact that

Petitioner has a pending Worker Compensation claim. This ignores the record before it that the claim was filed to avoid the running of the Statute of Limitations and remains held in abeyance pending the outcome of these proceedings.

For the above reasons, a Writ of Certiorari should issue in this case.

Respectfully Submitted,



MARVIN H. FEINGOLD
438 King Street
Charleston, SC 29403
(803) 722-0107

Counsel of Record for Petitioner

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DOMINGO ROMAN V. SUNNY SLOPE FARMS, INC.

CASE NUMBER 7:85-1254-14

DATE OF ENTRY: AUGUST 22, 1985

BENCH ORDER

THE COURT: This is an Order from the bench on a 12(b)(6) motion by the Defendants. While the Agriculture Worker Protection Act, or the language found therein, read -- one section read out of context perhaps or extreme interpretation being given to this statute might provide some relief to the Plaintiff. I believe I would be in error to interpret the statute that way. I find that under the facts of this case that worker's compensation is the exclusive remedy provided to the Plaintiff and, consequently, will grant the motion under 12(b)(6). I note that the section of the Agriculture Worker

Protection Act, section 1841, sub-paragraph (c), gives further support to my belief that Mr. Roman's exclusive remedy lies with worker's compensation.

As far as the motion to amend the complaint is concerned, I'm going to deny the motion to amend the complaint because the only possible cause of action under my ruling that would be allowed would be this claim for seventy dollars, which perhaps provides damages up to five hundred dollars, that arguably Mr. Roman has to assert. If Mr. Roman is sincere in his claim that there has been a violation of this Act and it cannot be negotiated or mediated, as the spirit of the Act implies, with the Defendant, then he should file a separate lawsuit alleging that cause of action and the Court will then entertain it. But I really think that's a matter that the parties can work out if there's any merit to his claim that

he now tries to assert. This means that the motions to compel, unless a separate or another lawsuit is filed, would be moot and the Court would not have to rule on them to compel discovery.

All right, any questions as to my Order, Mr. Feingold.

MR. FEINGOLD: Well, yes, Your Honor. I gather that the Court's ruling is based upon the intent question.

THE COURT: Well, that's part of it. That's part of it.

MR. FEINGOLD.: The fraudulent concealment is above and beyond the ---

THE COURT: Well, you may certainly take that position. Number one, you've admitted to me now that you may or may not have any proof of that, and I know that that's not necessarily before me, but there's no use to -- I mean, you make the allegation, but there's no proof of it that you can submit. But on top of that,

there are provisions in the worker's compensation law that provides for that type of misconduct, if in fact it did occur. And while it may not be the remedy that you want, the ten percent additional coverage and so forth, it is the remedy provided by the state of South Carolina and, in my judgment, it provides an exclusive remedy. And this federal statute was not designed to come in and to preempt or supercede the state worker's compensation law. And, indeed, I think that section (c) that I cited gives some more support to it, other than just general principles of law. From what you tell me, the act of spraying pesticide was not an intentional act, but at best was a reckless act with a disregard for the safety of Mr. Roman which, in my judgment, does not provide an exception to the worker's compensation law.

MR. FEINGOLD: Well, you refer

to that section (c) and I believe we juxtaposed that section to a similar section in the Occupational Safety and Health Act which refers specifically to the worker compensation ---

THE COURT: I think you're talking about a different section. I'm talking about section 1841(c) that provides -- it just talks about there's no requirement for insurance by an employer under certain circumstances and one of those circumstances is where state worker's compenstaion law provides a remedy. Any question from the Defendant as to my ruling?

MR. CASE: No, sir, Your Honor.

THE COURT: All right, fine. I reserve the right to issue a more detailed Order in the event I think it is appropriate. Thank you very much, gentlemen.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

DOMINGO ROMAN V. SUNNY SLOPE FARMS, INC.

CASE NUMBER 7:85-1254-14

DATE OF ENTRY: SEPTEMBER 17, 1985

ORDER

This matter is before the Court upon Plaintiff's motion requesting amendment of the Court's August 22, 1985 order issued from the bench. Fed.R.Civ.P. 59(e). For the reasons stated herein, the motion is denied.

On July 22, 1985 Defendant filed a motion to dismiss the complaint for failure to state a claim upon which relief could be granted. Fed.R.Civ.P. 12(b)(6). Because both parties submitted, and the Court considered, matters beyond the pleadings, the Court treated the motion as one for summary judgment pursuant to

Federal Rule of Civil Procedure 56. The Court granted the motion on the basis that South Carolina workers' compensation law provides the exclusive remedy for any injury Plaintiff may have suffered. S.C. CODE ANN. § 42-1-540 (Law. Co-op. 1985).

Plaintiff has now submitted additional evidence in support of his allegations that he was sprayed with chemicals while picking fruit at Defendant's orchards. The additional evidence is immaterial to the Court's ruling. The Court accepted as true all the allegations of the complaint and the oral representations by Plaintiff's attorney.

These allegations, accepted as true, simply fail to bring this case within the "intentional act" exception to the exclusive remedy provision of workers' compensation law. The general rule governing the scope of the exception is

set forth as follows:

> Since the legal justification for the common-law action is the nonaccidental character of the injury from the defendant employer's standpoint, the common-law liability of the employer cannot, under the almost unanimous rule, be stretched to include accidental injuries caused by the gross, wanton, wilful, deliberate, intentional reckless, culpable, or malicious negligence, breach of statute, or other misconduct of the employer short of genuine intentional injury....
>
> Even if the alleged conduct goes beyond aggravated negligence, and includes such elements as knowingly permitting a hazardous work condition to exist, knowingly ordering claimant to perform an extremely dangerous job, wilfully failing to furnish a safe place to work, or even wilfully and unlawfully violating a safety statute, this still falls short of the kind of actual intention to injure that robs the injury of accidental character.

2A Larson's Workmen's Compensation Law, § 68.13). See Also Turner v. United States, No. 84-1443 (4th Cir. Jan. 10, 1985); Stewart v. McLellan's Stores Co.,

194 S.C. 50, 9 S.E.2d 35 (1940).

Accordingly, Plaintiff's motion to amend the previous order granting summary judgment is denied.

AND IT IS SO ORDERED.

WILLIAM W. WILKINS, JR.
UNITED STATES DISTRICT JUDGE

Greenville, S. C.

September 16, 1985.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DOMINGO ROMAN V. SUNNY SLOPE FARMS, INC.

CASE NUMBER 85-2090

DATE OF ENTRY: May 7, 1987

WIDENER, Circuit Judge:

The appellant-plaintiff, a migrant farm-worker, was injured on the job and brought this action with claims under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C. § 1801 et

seq., and state common-law for battery and fraud. The plaintiff claims his injuries arose from being sprayed by pesticides while working in the defendant's fields. The district court dismissed the complaint because it found that South Carolina's Workers' Compensation Law, S.C. Code Ann. § 42-1-10 et seq. provided the exclusive remedy for all of plaintiff's claims. We affirm.

The plaintiff, Domingo Roman, alleges that while working as a migrant farm worker in the defendant's peach orchards during July and August of 1983, he was repeatedly sprayed with a chemical pesticide dangerous to humans. He also alleges that although his employer knew he was being sprayed, or should have known he might have been sprayed, the employer failed to provide protective clothing as required in their written employment agreement. Roman alleges that he was

hospitalized for four days during his employment for an illness caused by these sprayings.

The plaintiff claims that when he complained about the sprayings, his employment was terminated and he was promptly sent back to the employer's recruitment offices in New Jersey. He also alleges that his employer fraudulently concealed the facts surrounding the pesticide sprayings preventing the plaintiff from effectively pursuing his remedies at law.

The defendant, Sunny Slope Farms, Inc., denies that Roman was sprayed with any deleterious substance or exposed to pesticide in any manner which would require protective clothing. Furthermore, the defendant asserts that since it has elected coverage under the South Carolina worker's compensation Law, that Law provides the exclusive remedy against an

employer to an employee so injured on the job. See S.C. Code Ann. § § 42-1-540, 42-1-360(5).

The plaintiff's AWPA claim alleges that Roman and the defendant entered a written contract of employment wherein the employer promised to furnish him special clothing required to perform his work, and that plaintiff would at all relevant times be covered by a policy of Workmen's Compensation Insurance. Roman alleges that his employer's failure to furnish him protective clothing constitutes a violation of AWPA, actionable under 29 U.S.C. § 1854, since such failure violates § 1822(c) which requires an employer to conform to any working agreements made with its workers.

The district court held that the state workers' compensation insurance program provided an exclusive remedy to the plaintiff, precluding all other claims

arising from this incident. Furthermore, it dismissed the plaintiff's battery and fraud claims as encompassed with in § 42-9-70 of the South Carolina Code, which adds a 10 per cent penalty for an employer's wilful failure to comply with any statutory requirement. S.C. Code Ann. § 42-9-70.

The principal question raised on appeal and the question upon which the whole case turns is whether AWPA supplements the South Carolina Worker's Compensation Law in the sense that AWPA in an appropriate case provides a remedy where no state workers' compensation remedy is available, or whether it, indeed, provides a remedy in addition to state workers' compensation for an on-the-job injury, so that AWPA in an appropriate case provides a remedy whether or not the injury is covered by state workers' compensation.

We conclude that AWPA was not intended to provide an additional remedy for an on-the-job injury in a case in which state workers' compensation is available. We need not, and do not, decide whether or not AWPA provides a remedy in an appropriate case for an on-the-job injury when an employer does not have state workers' compensation insurance.[1]

We initially note that 29 U.S.C. § 1871 expresses Congress' intention to supplement state law: "This chapter is intended to supplement state law, and compliance with this chapter shall not excuse any person from compliance with appropriate state law and regulation." It is doubtless true, as plaintiff argues, that this section permits the States to enact more stringent requirements than AWPA

---

[1]AWPA, 29 U.S.C. §1854(c)(1), provides for an award of damages for "intentionally" violating any provision of the chapter.

without federal interference or preemption. But that is not to say that where an on-the-job injury is covered by a state workers' compensation law that the federal statute gives an additional remedy for the same injury. Section 1871, however, is a clear direction that Congress did not intend to preempt state workers' compensation laws. The fact that such laws were not intended to be preempted is shown by that part of the statute, 29 U.S.C. § 1841, dealing with motor vehicle safety. The section sets standards for the vehicles involved in the transportation of migrant workers by agricultural employers, and subsection (b)(1)(C) provides (in order to protect the workers) that the employer have a liability insurance policy or bond covering the operation of any vehicle used to transport migrant workers. This provision is then followed by subsection (c) which provides, in subsection (1), that

no such insurance policy or bond shall be required of the employer if those workers are transported only under circumstances for which there is coverage under a state workers' compensation law. In addition to demonstrating that Congress did not intend to preempt state law, § 1841 shows that Congress was cognizant of state workers' compensation laws, for AWPA was in that instance written in view of and to mesh with the state laws, and not to interfere or supersede them.

We keep in mind that this employer has elected to be bound and has procured workers' compensation insurance as it contracted with the plaintiff so to do. See S.C. Code Ann. § 42-1-360(5). So, the plaintiff here is covered by South Carolina workers' compensation insurance. He has in fact filed a state workers' compensation claim.

So far as the cases go, there is a

dearth of direct authority on the question at hand. We are persuaded, however, by two cases in arriving at our conclusion. They are United States v. Demko, 385 U.S. 149 (1966), and Garvin v. Alumax of South Carolina, Inc., 787 F.2d 910 (4th Cir. 1986).

The Demko case involved the claim of a federal prisoner who was injured while performing an assigned prison task. He filed his claim for compensation benefits under 18 U.S.C. § 4126 which, with the regulations promulgated under it, provided that prisoners would be compensated for such injuries, but not to exceed the amount payable under the federal employees' compensation act. The statute authorizing the prisoner's claim contained no provision that the compensation award was exclusive. See the Third Circuit opinion in Demko, 350 F.2d 698, 700. The prisoner then filed his claim against the

United States under the Federal Tort Claims Act. The Court denied the claim, stating that: "Consequently, we decide this case on the Johansen principle that, where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." 385 U.S. 152.

In Garvin, a longshoreman was injured on a pier in South Carolina in a location in which he was covered both by the federal Longshoreman and Harbor Workers' Compensation Act, as well as under the South Carolina Workers' Compensation Law. He filed his claim under the federal statute for compensation, and then sued Alumax, the owner of the machine which injured him, which would have been immune under state law because of the South Carolina Workers' Compensation Act, but not under the federal statute which

extended immunity only to the subcontractor for whom Garvin worked, not to the owner. We held that Garvin's suit was barred because of the immunity granted by the South Carolina Workers' Compensation Law. While the decision in Garvin was based in part on the fact that Garvin's suit against Alumax was based on a state common law cause of action, see pp. 917-18, we also reasoned, in harmonizing the state and federal statutes, that: "There is nothing in that amendment[2] [to the LHWCA] or its legislative history, however, to indicate a congressional intention to restrict the application of state created immunity of contractors in situations in which the state statute traditionally had been applied." 787 F.2d 916-917.

Applying the reasoning of Demko and Garvin to the case at hand, we find

---

[2]A 1984 amendment to the L.H.W.C.A. provided that the federal statute's immunity did not extend to Alumax. PL 98-426.

nothing in the legislative history, which is found at 4 U.S. Code & Adm. News (1982), p. 4547 (House Rep. No. 97-885, no Senate report submitted) or in the language of the statute which indicate that the South Carolina Workers' Compensation Law, which does cover the plaintiff, should not be the exclusive remedy to protect him from an on-the-job injury. Demko p. 152.[3] As Demko points out, again on page 152, to hold that the AWPA would have the supplemental effect claimed by the plaintiff would give the plaintiff greater protection than other agricultural workers in South Carolina covered by that State's Workers' Compensation Law. By the same token, we find nothing in the AWPA or in its legislative history to indicate a Congressional intention to restrict the

---

[3]The Court contrasted United States v. Muniz, 374 U.S. 150 (1963), in which a prisoner had been allowed to proceed under the F.T.C.A. for an injury when he "was not protected under the prison compensation

application of state created immunity in cases in which a state workers' compensation law covers the injury at hand. Garvin pp. 916-917.[4]

When we take the reasoning of Demko and Garvin into account, considering that the statute itself is in terms not exclusive and that at least one part of it was drafted to coincide with state workers' compensation laws, we are of opinion, and hold, that when a migrant agricultural worker is injured on the job and his injury is covered by a state workers' compensation law, as here, if that state's workers' compensation law provides that it is the exclusive remedy, as does South Carolina's, the worker is bound by that provision.

The judgment of the district court

---

laws". 385 U.S. 153.

[4]We mention, and this is unspportive of our opinion, that the plaintiff here contracted with his employer that the employer place him under South Carolina Workers' Compensation Law, which provides

is accordingly

AFFIRMED.[5]

MURNAGHAN, Circuit Judge, concurring:

In concurring with the majority opinion, I do not mean to cast doubt on the result reached. However, the substantial reliance placed by the majority on Garvin v. Alumax of South Carolina, Inc., 787 F.2d 910 (4th Cir. 1986), requires a response by me. I dissented in Garvin on the grounds that the court lacked jurisdiction to consider and reach a decision on the points dealt with in Garvin. I still retain that view though of course Garvin is the law of the

---

that it is the exclusive remedy. S.C. Code Ann. § 42-5-10. Yet, at the same time the plaintiff seeks the benefits of that statute, he seeks to escape from the exclusivity provisions of the same law under which he claims.

[5]The plaintiff on appeal takes issue with the district court's statement that it considered the case as on a motion for summary judgment, but in its order dismissed for failure to state a cause of

circuit. However, in the present case reliance of Garvin was not necessary to the decision and I would prefer not to rely on it in reaching the conclusion come to by the majority.

Otherwise, I have no difference with the majority opinion and therefore concur.

---

action under Rule 12(b)(6). He also takes issue with the grant of summary judgment. While in some cases such a point might be determinative, we have in our decision given the plaintiff the benefit of every fact he claims as did the district court. So, whether the case be decided upon a motion to dismiss or upon a motion for summary judgment is of no moment.

29 USC 1841 MOTOR VEHICLE SAFETY

SEC. 401.(a)(1) Except as provided in paragraph (2), this section applies to the transportation of any migrant or seasonal agricultural worker.

(2) This section does not apply to the transportation of any migrant or seasonal agricultural worker on tractor, combine, harvester, picker, or other similar machinery and equipment while such worker is actually engaged in the planting, cultivating, or harvesting of any agricultural commodity or the care of livestock or poultry.

(b)(1) When using, or causing to be used, any vehicle for providing transportation to which this section applies, each agricultural employer, agricultural association, and farm labor contractor shall--

(A) ensure that such vehicle conforms to the standards prescribed

by the Secretary under paragraph (2) of this subsection and other applicable Federal and State safety standards,

(B) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle, and

(C) have an insurance policy or a liability bond that is in effect which insures the agricultural employer, the agricultural association, or the farm labor contractor against liability for damage to persons or property arising from the ownership, operation, or the causing to be operated, of any vehicle used to transport any migrant or seasonal agricultural worker.

(2)(A) For purposes of paragraph (1)(A), the Secretary shall prescribe such regulations as may be necessary to protect the health and safety of

migrant and seasonal agricultural workers.

(B) To the extent consistent with the protection of the health and safety of migrant and seasonal agricultural workers, the Secretary shall, in promulgating regulations under subparagraph (A), consider, among other factors--

(i) the type of vehicle used,

(ii) the passenger capacity of the vehicle,

(iii) the distance which such workers will be carried in the vehicle,

(iv) the type of roads and highways on which such workers will be carried in the vehicle,

(v) the extent to which a proposed standard would cause an undue burden on agricultural employers, agricultural associations, or farm labor contractors.

(C) Standards prescribed by the Secretary under subparagraph (A) shall be in addition to, and shall not supersede or

modify, any standard under part II of the Interstate Commerce Act (49) U.S.C. 301 et seq.), or any successor provision of subtitle IV of title 49, United States Code, or regulations issued thereunder, which is independently applicable to transportation to which this section applies. A violation of any such standard shall constitute a violation under this Act.

(D) In the event that the Secretary fails for any reason to prescribe standards under subparagraph (A) by the effective date of this Act, the standards prescribed under section 204(a)(3a) of the Interstate Commerce Act (49 U.S.C. 304(a)(3a), relating to the transportation of migrant workers, shall, for purposes of paragraph (1)(A), be deemed to be the standards prescribed by the Secretary under this paragraph, and shall, as appropriate and reasonable in the circumstances, apply (i)

without regard to the mileage and boundary line limitations contained in such section, and (ii) until superseded standards actually prescribed by the Secretary in accordance with this paragraph.

(3) The level of the insurance required by paragraph (1)(C) shall be at least the amount currently required for common carriers of passengers under part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.), and any successor provision of subtitle IV of title 49, United States Code, and regulations prescribed thereunder.

(c) If an agricultural employer, agricultural association, or farm labor contractor is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in

the case of bodily injury or death as provided by such State law, the following adjustments in the requirements of subsection (b)(1)(C) relating to having an insurance policy or liability bond apply:

(1) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

(2) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

(d) The Secretary shall, by regulations promulgated in accordance with section 511 not later than the effective date of this Act, prescribe the standards required for the purposes of implementing this section. Any subsequent

revision of such standards shall also be accomplished by regulation promulgated in accordance with such section.

29 USC §1854 PRIVATE RIGHT OF ACTION

Sec. 504.(a) Any person aggrieved by a violation of this Act or any regulation under this Act by a farm labor contractor, agricultural employer, agricultural association, or other person may file suit in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy and without regard to the citizenship of the parties and without regard to exhaustion of any alternative administrative remedies provided herein.

(b) Upon application by a complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action.

(c)(1) If the court finds that the respondent has intentionally violated any provision of this Act or any regulation

under this Act, it may award damages up to and including an amount equal to the amount of actual damages, or statutory damages of up to $500 per plaintiff per violation, or other equitable relief, except that (A) multiple infractions of a single provision of this Act or of regulations under this Act shall constitute only one violation for purposes of determining the amount of statutory damages due a plaintiff; and (B) if such complaint is certified as a class action, the court shall award no more than the lesser of up to $500 per plaintiff per violation, or up to $500,000 or other equitable relief.

(2) In determining the amount of damages to be awarded under paragraph (1), the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation.

29 USC §1856 WAIVER OF RIGHTS

Sec. 506. Agreements by employees purporting to waive or to modify their rights under this Act shall be void as contrary to public policy, except that a waiver or modification of rights in favor of the Secretary shall be valid for purposes of enforcement of this act.

29 USC §1871 STATE LAWS AND REGULATIONS

Sec. 521. This Act is intended to supplement State law, and compliance with this Act shall not excuse any person from compliance with appropriate State law and regulation.

S.C. CODE ANN.

§ 42-1-360.

Exemption of casual employees and certain other employments from Title.

This Title shall not apply:

(5) Agricultural employees; unless the

agricultural employer voluntarily elects to be bound by this Title, as provided by §42-1-380.

S.C. CODE ANN.

§ 42-1-380.

Waiver of exemption by employer.

Any person employing employees in the State and exempted from the mandatory provisions of this Title may come in under the terms of this Title by filing with the Commission a written notice of his desire to be subject to the terms and provisions of this Title. Any such person shall come under the provisions of this Title and be affected thereby thirty days after the date of such notice.

S.C. CODE ANN.

42-1-540.

Employee's rights and remedies under Title exclude all others against employer.

The rights and remedies granted by this Title to an employee when he and his employer have accepted the provisions of this Title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such emplyee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death.

Provided, however, this limitation of actions shall not apply to injuries resulting from acts of a subcontractor of the employer or his employees or bar actions by an employee of one subcontractor against another subcontractor or his employees when both subcontractors are hired by a common employer.

S.C. CODE ANN.

§42-9-20

Amount of compensation for partial disability.

Except as otherwise provided in §42-9-30, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during such disability a weekly compensatin equal to sixty-six and two-thirds percent of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than the average weekly wage in this State for the preceding fiscal year. In no case shall the period covered by such compensation be greater than three hundred forty weeks from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall not be deducted from a maximum period allowed in this section for partial disability.

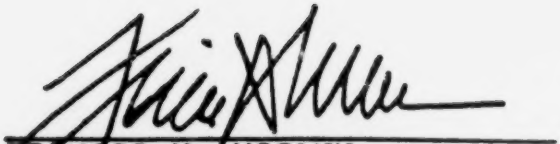
STATE OF SOUTH CAROLINA) CERTIFICATE
COUNTY OF CHARLESTON) OF FILING

PERSONALLY appeared before me Francis X. McCann, who being duly sworn, deposes and says that he has knowledge of the mailing of the Petition for Writ of Certiorari in the case of Domingo Roman v. Sunny Slope Farms, Inc., to the correct address for the Office of the Clerk, Supreme Court of the United States, Washington, D.C. for filing.

That the original and forty (40) copies were to his knowledge placed in a package with prepaid first-class postage and deposited in the United States Mail at Charleston, South Carolina on August 4, 1987.

That to his knowledge the said original and forty (40) copies were mailed within ninety (90) days of the judgment of the

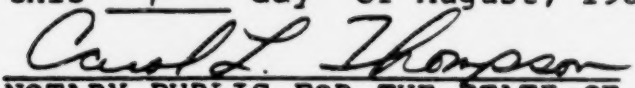
lower Court.



FRANCIS X. MCCANN
Bar of the U.S.
Supreme Court

Sworn to and subscribed before me

this 4th day of August, 1987.



NOTARY PUBLIC FOR THE STATE OF
SOUTH CAROLINA

My Commission expires: 11/10/92.

STATE OF SOUTH CAROLINA) AFFIDAVIT
COUNTY OF CHARLESTON) OF SERVICE

PERSONALLY appeared before me Marvin H. Feingold, who being duly sworn, deposes and says that he served three (3) copies of the attached Petition for Writ of Certiorari in the action of Domingo Roman v. Sunny Slope Farms, Inc., upon the counsel of record for defendant, Sunny Slope Farms, by depositing said documents in the United States Post Office with first-class postal prepaid and addressed to the office of said counsel, Stanley T. Case, at P.O. 451, Spartanburg, South Carolina 29304 on this 4th day of August, 1987.

MARVIN H. FEINGOLD

Sworn to and subscribed before me this 4th day of August, 1987.

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

My Commission expires August 28, 1994.

Supreme Court, U.S.
FILED
AUG 31 1987
JOSEPH F. SPANIOL, JR
CLERK

No. 87-290

==========

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

Domingo Roman,

Petitioner,

vs.

Sunny Slope Farms, Inc.,

Respondent.

==========

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

==========

Stanley T. Case, Esquire
Butler, Means, Evins & Browne
Attorneys at Law
234 North Church Street
P. O. Box 451
Spartanburg, SC 29304

(803) 582-5630

Counsel of Record for Respondent

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	ii
Statement of the Case	1
Summary of Argument	6
Argument	6
Conclusion	20

QUESTION PRESENTED FOR REVIEW

Does the Petitioner's erroneous assertion that the Migrant and Seasonal Agricultural Worker Protection Act provides an additional remedy for an on-the-job injury in a case in which state worker's compensation is available present an important question of federal law which should be settled by this Court?

TABLE OF AUTHORITIES

Page

Cases

De La Fuente v. Stokely Van Camp Company, Inc., 713 F.2d 225 (7th Cir. 1983) 16

Garvin v. Alumax of South Carolina, Inc., 787 F.2d 910 (4th Cir. 1986) 11,13

Johansen v. United States, 343 U.S. 427 (1952) 12,20

Marchbanks v. Duke Power Company, 190 S.C. 336, 2 S.E.2d 825, 836 (1939) 9,10

Marshall v. Green Goddess Avocado Corp., 615 F.2d 851 (9th Cir. 1980) 17

Roman v. Sunny Slope Farms, Inc., 817 F.2d 1116 (4th Cir. 1987) 9,12,14,17,20

United States v. Demko, 385 U.S. 149 (1966) 11,13,20

Table of Authorities, continued Page

Statutes and Rules

South Carolina Code Annotated (1976)
§ 42-1-540 3

South Carolina Code Annotated
§ 42-1-360(5) 10

Supreme Court Rule 17 18

Supreme Court Rule 17.1(c) 19,20

18 U.S.C. § 4126 11

29 U.S.C. § 1801, et seq. 6

29 U.S.C. § 1832(c) 2,7

29 U.S.C. § 1841 8,9,15

29 U.S.C. § 1841(c) 15

29 U.S.C. § 1854 7

29 U.S.C. § 1871 8,15

Table of Authorities, continued Page

Miscellaneous

2A Larson's, Workmen's Compensation Law, § 65.30 10,11

4 Larson's, Workmen's Compensation Law, § 93, et seq. 15,16

4 U.S. Code and Administrative News (1982), page 4547 (House Rep. No. 97-885 (no Senate reports submitted) 14

13 Moore's Federal Practice, ¶ 817.41, p. SC17-38 19

Harlan, Manning The Dikes, (1958) 13 Record NYCBA 541 at 551 19

STATEMENT OF THE CASE

This proceeding was instituted in the Federal District Court for South Carolina against Respondent, Sunny Slope Farms, Inc., by its employee, Domingo Roman, a migrant farm worker represented by the Neighborhood Legal Assistance Program, Inc., who sought to recover damages for injuries allegedly caused by the spraying of pesticides. The Complaint stated that pursuant to a written contract of employment, "Plaintiff would at all relevant times be covered by a policy of workmen's compensation insurance . . . ". Petitioner further alleged in pertinent part that as a result of this spraying, he "suffered physical injuries which will be proven at trial." The Complaint contained several separate causes of action or

claims for relief which were all essentially based on the foregoing allegations, but the assertion that the Petitioner is apparently attempting to make in this Court is based upon the theory that the Respondent had violated the terms of the working arrangements between the parties which it is required to abide by under 29 U.S.C. §1832(c), The Migrant and Seasonal Agricultural Protection Act (AWPA).

In its Answer, the Respondent set forth, among other things, the defense that if the Petitioner was able to prove an on-the-job injury, he would be entitled only to workers' compensation benefits under the South Carolina Workers' Compensation Act, which Act provides the exclusive remedy for Petitioner's alleged injury. This conclusion is required under

the clear terms of South Carolina Code Annotated, §42-1-540, which provides, without qualification, that:

> "The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representatives, parents, dependents, or next of kin, as against his employer, at common law or otherwise, on account of such injury, loss of service, or death."

The Respondent made a motion to dismiss the Complaint on the grounds that Petitioner had failed to state a cause of action against the Respondent upon which relief could be granted. Argument was had on the motion and the District Court ruled that the South Carolina Workers' Compensation law provided the exclusive

remedy for any injury Petitioner may have suffered.

The Petitioner filed an appeal of this Order to the Fourth Circuit Court of Appeals. The case was argued on June 3, 1986, and, by Order dated May 7, 1987, the Fourth Circuit Court of Appeals confirmed, without dissent, the decision of the District Court. The Fourth Circuit Court of Appeals stated in pertinent part:

> "The principal question raised on appeal and the question upon which the whole case turns is whether AWPA supplements the South Carolina Workers' Compensation law in the sense that AWPA in an appropriate case provides a remedy where no state workers' compensation remedy is available, or whether it, indeed, provides a remedy in addition to state workers' compensation for an on-the-job injury, so that AWPA in an appropriate case provides a remedy whether or not the injury is covered by state workers' compensation.

> "We conclude that AWPA was not intended to provide an additional remedy for an on-the-job injury in a case in which state workers' compensation is available. We need not, and do not, decide whether or not AWPA provides a remedy in an appropriate case for an on-the-job injury when an employer does not have state workers' compensation insurance."

The Respondent is in receipt of a Petition for Writ of Certiorari which contains a Certificate of Filing indicating that forty copies of the Petition were mailed to the office of the Clerk, Supreme Court of the United States, Washington, D.C., for filing, on August 4, 1987.

SUMMARY OF ARGUMENT

The Fourth Circuit Court of Appeals correctly ruled that the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C. §1801, et seq., was not intended to provide an additional remedy for an on-the-job injury in a case in which state workers' compensation is available and the appellant's erroneous assertion to the contrary does not present an important question of federal law which should be settled by this Court.

ARGUMENT

The Petitioner's asserted claim under AWPA contains the assertion that Petitioner Roman and the Respondent Sunny Slope entered into a written contract of employment wherein Sunny Slope promised to furnish Petitioner special clothing

required to perform his work and that the Petitioner would at all relevant times be covered by a policy of workmen's compensation insurance. The Petitioner asserted that the employer's failure to furnish him protective clothing constituted a violation of AWPA, which was argued to be actionable under 29 U.S.C. §1854, since such failure violated §1832(c) which required an employer to conform to any working arrangements made with its workers.

The District Court and the Court of Appeals correctly ruled that the state workers' compensation insurance program provided the exclusive remedy to the Plaintiff, precluding all other claims arising from this incident. The Fourth Circuit Court of Appeals specifically held that "AWPA was not intended to provide an

additional remedy for an on-the-job injury in a case in which state workers' compensation is available."

The Fourth Circuit Court of Appeals properly observed that 29 U.S.C. §1871, which contemplates compliance with appropriate state law, "is a clear direction that Congress did not intend to preempt state workers' compensation laws." The Court continued:

> "The fact that such laws were not intended to be preempted is shown by that part of the statute, 29 U.S.C. §1841, dealing with motor vehicle safety. The section sets standards for the vehicles involved in the transportation of migrant workers by agricultural employers, and subsection (b)(1)(C) provides (in order to protect the workers) that the employer have a liability insurance policy or bond covering the operation of any vehicle used to transport migrant workers. This provision is then followed by subsection (c) which provides, in

> subsection (1), that no such insurance policy or bond shall be required of the employer if those workers are transported only under circumstances for which there is coverage under a state workers' compensation law. In addition to demonstrating that Congress did not intend to preempt state law, §1841 shows that Congress was cognizant of state workers' compensation laws, for AWPA was in that instance written in view of and to mesh with the state laws, and not to interfere or supersede them."

See Domingo Roman v. Sunny Slope Farms, Inc., 817 F.2d 1116, at 1118 and 1119 (4th Cir. 1987) (Petition for Writ of Certiorari - Appendix - Pages 31 and 32).

Of course, it is elementary law in South Carolina that if the facts bring a particular case within the terms of the Compensation Act, the employee is restricted to his right of claim for compensation under the Act. Marchbanks v. Duke Power Company, 190 S.C. 336, 2 S.E.2d

825, 836 (1939). As the Court stated in Marchbanks, the very purpose of the Act is to assure the employee of redress for his injuries, if the facts show he is entitled thereto, and to relieve him of the uncertainties of a trial in a suit for damages. Id. In the instant case, the Respondent elected to be bound and has procured workers' compensation insurance in compliance with appropriate State law and the working arrangement of the parties. See South Carolina Code Annotated, §42-1-360 (5). The Petitioner in this case is covered by South Carolina workers' compensation insurance and has in fact filed a state workers' compensation claim.

The decision of the Fourth Circuit is in keeping with the black letter rule of law set out by Professor Larson, in his extensive treatment of the "exclusive

remedy" doctrine in his treatise on workmen's compensation law:

> "The exclusiveness rule relieves the employer not only of common law tort liability, but also of statutory liability under all state and federal statutes, as well as of liability in contract and in admiralty, for an injury covered by the compensation act."

2A Larsons, Workmen's Compensation Law, Section 65.30.

The Fourth Circuit Court of Appeals was persuaded by the cases of United States v. Demko, 385 U.S. 149, 87 S. Ct. 382, 17 L. Ed. 258 (1966) and Garvin v. Alumax of South Carolina, Inc., 787 F.2d 910 (4th Cir. 1986), in arriving at its conclusion in this case. The Demko case involved the claim of a federal prisoner who was injured while performing an assigned prison task and who filed a claim under 18 U.S.C. §4126 which provided

compensation to federal prisoners for industrial injuries. The statute authorizing a prisoner's claim contained no provision that the compensation award was exclusive and the prisoner attempted to file a claim against the United States under the Federal Tort Claims Act. The Supreme Court denied the claim stating, in language which was quoted with approval by the Fourth Circuit Court of Appeals in this case, that: "Consequently, we decide this case on the Johansen principle that, where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group. 385 U.S. 152." (emphasis supplied) See Roman, supra, Petition for Writ of Certiorari - Appendix - p. 34.

In the case of Garvin v. Alumax of South Carolina, Inc., supra, the plaintiff was injured on a pier in South Carolina and was covered by the Federal Longshoremen and Harbor Workers' Compensation Act and the South Carolina Workers' Compensation law. He filed a claim under the federal statute for compensation and then attempted to sue Alumax, the owner of a machine which injured him, which entity would have been immune under state law by operation of the South Carolina Workers' Compensation Act. The Fourth Circuit Court of Appeals properly held that Garvin's suit was barred because of the immunity granted by the South Carolina Workers' Compensation law.

Utilizing the reasoning of Demko and Garvin, the Fourth Circuit Court of

Appeals in the instant case reviewed the legislative history of AWPA and concluded, "We find nothing in the legislative history, which is found at 4 U.S. Code and Administrative News (1982), page 4547 (House Rep. No. 97-885, no Senate reports submitted) or in the language of the statute which indicates that the South Carolina Workers' Compensation law, which does cover the plaintiff, should not be the exclusive remedy to protect him from an on-the-job injury." See Roman, supra, Petition for Writ of Certiorari - Appendix - Page 36.

Petitioner's counsel admitted in the Brief submitted to the Fourth Circuit Court of Appeals that he had found no case where physical injuries had been compensated under AWPA. Petitioner's argument that Congress meant to address

physical as well as economic threats imposed by the migrant farm worker environment remains unsupported by precedent even in his Petition for Writ of Certiorari. As indicated by the Fourth Circuit, AWPA by its terms contemplates compliance with state law in §1871 and §1841(c). §1841, dealing with motor vehicle safety, specifically states that if an agricultural employee provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by state law, certain insurance requirements under §1841 do not apply. Of course, workers' compensation insurance coverage, under most state statutes, is comprehensive and the policies are written in conformity with state statutes to cover all claims arising under the Act. See generally 4 Larson's

Workmen's Compensation Law, §93, et seq. If on-the-job motor vehicle injuries are covered by insurance, all other on-the-job injuries are covered by the same insurance policy. As AWPA by its terms contemplates workers' compensation coverage for agricultural workers for injuries arising out of their employment, it strains logic for the petitioner to even argue that AWPA, which has never been applied to give a remedy for personal injuries, was designed to displace the comprehensive schemes set up by the state workers' compensation acts.

AWPA does not specifically state that damages for physical injuries are recoverable and the cases appear to deal solely with economic loss. See for example De Le Fuente v. Stokely Van Camp Company, Inc., 713 F.2d 225 (7th Cir.

1983); Marshall v. Green Goddess Avocado Corp., 615 F. 2nd 851 (9th Cir. 1980). Contrary to Petitioner's argument, before this court, the Fourth Ciruit Court of Appeals did not assume for purposes of argument that Claimant would have an otherwise actionable claim under AWPA. The Fourth Circuit specifically stated "we need not, and do not, decide whether or not AWPA provides a remedy in an appropriate case for an on-the-job injury when an employer does not have state workers' compensation insurance". See Roman, supra, Petition for Writ of Certorari - Appendix - page 30.

Respondent would submit that it is not in the individual Petitioner's best interest to seek an uncertain and heretofore unproven remedy under AWPA when a comprehensive and certain workers'

compensation remedy is available to Petitioner. Respondent is a private corporation and would submit that the Neighborhood Legal Assistance Program, Inc. is requiring Respondent to spend unnecessary time and effort to defeat this unmeritorious claim, which represents an effort to create a cause of action without sufficient statutory or legal basis. The claim was properly rejected by the South Carolina District Court and the Fourth Circuit Court of Appeals.

The Petition for Writ of Certiorari should not be granted by this court. Rule 17 provides that review on Writ of Certiorari is not a matter of right but of judicial discretion, and will be granted only when there are special and important reasons therefor. Petitioner's position is without merit and, of course, there

have been no decisions in other Federal Courts of Appeal which are in conflict with the decision by the Fourth Circuit Court of Appeals.

The decision in the instant case does not "decide an important question of Federal Law which has not been, but should be, settled by this court." See Supreme Court Rule 17.1(c). The Petitioner's assertions were properly denied by the Fourth Ciruit Court of Appeals, and the lack of any decision holding that the AWPA provides a remedy in an appropriate case for an on-the-job injury, indicates that the question to be reviewed is not one of "general importance". See 13 Moore's Federal Practice ¶ 817.41, at page SC17-38. See also Harlan, Manning The Dikes, (1958) 13 Record NYCBA 541 at 551.

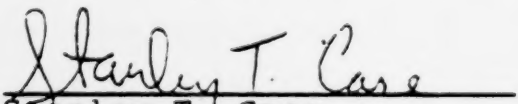
The fact that the Fourth Circuit has relied on the reasoning utilized by this court in The United States v. Demko, 385 US 149 (1966) and Johansen v. United States, 343 U.S. 427 (1952), indicates that it has not decided a Federal question in conflict with general principles announced by this court. See Rule 17.1(c).

CONCLUSION

The Fourth Circuit Court of Appeals correctly held that "when a migrant agricultural worker is injured on the job and his injury is covered by a State Workers' Compensation Law, as here, if that state's workers' compensation law provides that it is the exclusive remedy, as does South Carolina's, the worker is bound by that provision." See Roman, supra, Petition for Writ of Certorari -

Appendix - page 37. In so ruling, the Fourth Circuit correctly considered the legislative history of The Agricultural Workers' Protection Act, South Carolina law, and the reasoning of the Supreme Court in analogous situations. Petitioner has not demonstrated any special and important reason for granting the Petition and the Respondent would respectfully submit that the Petition should be denied.

Respectfully submitted,



Stanley T. Case
BUTLER, MEANS, EVINS
AND BROWNE
Post Office Drawer 451
Spartanburg, SC 29304

ATTORNEY FOR RESPONDENT
Bar of the United States
Supreme Court

August 31, 1987.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

CERTIFICATE
OF FILING

PERSONALLY appeared before me Stanley T. Case, who being duly sworn, deposes and says that he has knowledge of the mailing of the Brief in Opposition to Petition for Writ of Certiorari in the case of Domingo Roman v. Sunny Slope Farms, Inc., to the correct address for the Office of the Clerk, Supreme Court of the United States, Washington, D.C., for filing.

That the original and forty (40) copies were to his knowledge placed in a package with prepaid postage and mailed via first class United States Express overnight mail at the United States Post Office in Spartanburg, South Carolina, on August 31, 1987.

That to his knowledge the said original and forty (40) copies were

mailed within the time required for such filing.

Stanley T. Case

STANLEY T. CASE
Bar of the United States
Supreme Court

Sworn to and subscribed before me

this 31st day of August, 1987.

Agnes D. Keller

NOTARY PUBLIC FOR THE STATE OF
SOUTH CAROLINA
My Commission Expires: 1-30-91

STATE OF SOUTH CAROLINA) AFFIDAVIT
COUNTY OF SPARTANBURG) OF SERVICE

PERSONALLY appeared before me Stanley T. Case, who being duly sworn, deposes and says that he served three (3) copies of the attached Brief in Opposition to Petition for Writ of Certiorari in the action of Domingo Roman v. Sunny Slope Farms, Inc., upon the counsel of record for Petitioner, Domingo Roman, by depositing said documents in the United States Post Office with first class postage prepaid and addressed to the office of Marvin H. Feingold, Neighborhood Legal Assistance Program, Inc., 438 King Street, Charleston, South Carolina 29403, on this 31 day of August, 1987.

Stanley T. Case
STANLEY T. CASE

Sworn to and subscribed before me this 31st day of August, 1987.

Agnes D. Keller
NOTARY PUBLIC FOR THE STATE OF S. C.
My Commission Expires: 1-30-91

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to Rule 28, the Respondent Sunny Slope Farms, Inc., makes the following disclosure:

1. The Respondent Sunny Slope Farms, Inc., is a privately held corporation and is not a subsidiary or affiliate of a publicly owned corporation.

2. Liberty Mutual Insurance Company is a publicly owned corporation, that is not a party to the appeal, but has a financial interest in the outcome for the reason that Liberty Mutual Insurance Company provides public liability insurance coverage and workers' compensation insurance coverage to Sunny Slope Farms, Inc.

This listing has been included in a document filed earlier in this case filed pursuant to Local Rule 47 and Internal Operating Procedure 47.1 of the United States Court of Appeals for the Fourth Circuit, Case Number 85-2090, dated November 1, 1985, entitled "Disclosure of Corporate Affiliations and Financial Interest."

Stanley T. Case
Counsel for Respondent

Date: August 31, 1987